

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.12644 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the order dated 01.08.2016 in C.F.R.1431 of 2015 passed by the Judicial Magistrate of First Class, Nandaluru, Kadapa District and orders dated 10.11.2017 in Criminal Revision Petition No.50 of 2016 and Criminal Revision Petition No.12 of 2017 passed by the District and Sessions Judge, Kadapa and consequent proceedings in PRC No.12 of 2017 against the petitioners.

2. On the strength of the report lodged by the 2nd respondent with the police, the police took up investigation and filed final report before the Magistrate after issuing notice to the 2nd respondent. On receipt of notice, the 2nd respondent filed protest petition. The Magistrate enquired into the protest petition and recorded statements and concluded that the allegations made in the complaint would constitute an offence punishable under Sections 506, 509 IPC and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short the Act) against A1 and A2 only while dismissing the protest petition against A3 to A5 and accordingly taken cognizance.

3. It is the contention of learned counsel for the petitioners that the Magistrate cannot take cognizance of offence and the Sessions Court alone is competent to take cognizance of offence against the petitioners and that the role of the Magistrate is only passive in committing the case to the Court of Sessions. Therefore, taking cognizance of offence against these petitioners is illegal.

4. During hearing, learned counsel for the petitioners placed judgment of the Apex Court in **Balveer Singh and another v State of Rajasthan and another**¹.

5. Learned Additional Public Prosecutor would contend that is at the PRC stage, the proceedings cannot be quashed, but reported no objection to quash the order to the extent of taking cognizance of offence against A1 and A2 for the offences referred above.

6. Admittedly, in the protest petition, the Magistrate took cognizance of offence against A1 and A2 after following necessary procedure, but taking cognizance by himself is illegal, which is questioned in revision petition filed under Section 397 Cr.P.C before III Additional Sessions Judge, Rajampet, and the same was confirmed by the Sessions Judge. The main challenge before this Court is that the Magistrate is not competent to take cognizance of offence. In **Balveer Singh's** case referred supra, at para 11, the Apex Court made it clear that Section 193 of the Code empowers the Court of Session to take cognizance of offences and states that the Court of Session shall not take cognizance of any offence as the Court of original jurisdiction unless the case has been committed to it by the Magistrate under this Code. As per the section, the Court of Session can take cognizance only after the case has been committed to it by the Magistrate. However, once the case is committed to it by the Magistrate, the Court of Session is empowered to take cognizance acting 'as a Court of original jurisdiction'.

7. The role of the Magistrate is limited to the extent of applying its mind to the facts of the case, and if the case is exclusively triable

¹ (2016)6 SCC 680

by the Court of Session by following the procedure under Section 207 and 209 Cr.P.C. has to commit the same to the Session Division. Therefore, the Magistrate cannot take cognizance of offence against the petitioners for various offences referred supra. The order passed by the Magistrate taking cognizance of offence against A1 and A2 is illegal and the same is liable to be set aside.

8. Accordingly, the criminal petition is allowed setting aside the order dated 01.08.2016 in C.F.R.1431 of 2015 passed by the Judicial Magistrate of First Class, Nandaluru, Kadapa District taking cognizance of offence against A1 and A2 while upholding the other part of the order and directing the Magistrate to follow the procedure under Section 209 Cr.P.C.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

20.12.2017
kvrn

M.SATYANARAYANA MURTHY,J

